

### **REMARKS/ARGUMENTS**

Applicants have received and carefully reviewed the Final Office Action mailed March 30, 2009. This amendment is being filed along with a Request for Continued Examination. In the current action, claims 49-53 and 55-65 are pending and have been rejected. With this amendment, claims 49, 51, and 65 have been amended to further clarify the claim language and/or correct typographical errors, with the amendments supported by at least the originally filed drawings. Claims 59-63 have been cancelled without prejudice to advance prosecution. Favorable consideration of the above amendments and the following remarks is respectfully requested.

#### ***Objections and Amendments to the Specification and Drawings***

The amendments to the Specification and new Figures 4 and 5 added in the amendment dated December 19, 2008 were objected to as introducing new matter. Without conceding the correctness of the objection, Applicants have cancelled the objected-to subject matter, thereby rendering the objection moot.

#### ***Claim Rejections – 35 USC § 112***

Claims 49-53 and 55-65 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The Office Action states that the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In particular, the Office Action states that “at least the length, uniform width, thickness, uniform profile, and line tangent of the wire cannot be found in the original specification and are considered as new matter.” Applicants respectfully disagree.

Applicants submit that any object or structure inherently has a length, a width, and/or a thickness, and thus no literal disclosure of these characteristics is required. Claim language directed to these inherent characteristics cannot properly be considered as new matter.

With regards to the uniform width, uniform profile, and line tangent of the wire, while Applicants believe these concepts are adequately supported at least by the original

drawings, Applicants have amended and/or cancelled the claims in a way that is believed to overcome the current rejection under 35 U.S.C. §112, first paragraph. Accordingly, Applicants respectfully request that the rejection under §112 be withdrawn.

***Claim Rejections – 35 USC § 102***

Claims 49-53 and 55-65 were rejected under 35 U.S.C. §102(b) as being anticipated by Dubrul et al. (U.S. Publication No. 2002/0019597). With this amendment, claims 59-63 have been cancelled without prejudice. Applicants respectfully traverse the rejection of claims 49-53, 55-58, and 64-65, particularly in view of the current amendments.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). (MPEP 2131).

The entire rejection under §102 states:

“In regard to Claims 49-53 and 55-65, Dubrul et al discloses an embolectomy device, comprising: a catheter (120), a vacuum source fluidly connected to the distal end of the first shaft and second shaft (there must be a vacuum source located outside the tissue and fluidly connected to the distal end of the first shaft and second shaft since fluid is withdrawn through suction inlets 122, Fig 11A); and a wire (the wire of the mesh cutter, Fig. 11D).”

The Response to Arguments states:

“As noted above, all of the claimed structure is found in the reference and the examiner contends that the prior art is capable of performing the claimed functions.”

Applicants respectfully note that the above rejection and the Examiner’s response to Applicants’ previous reply do not appear to address each and every element of independent claim 49 or dependent claims 50-53 and 55-65 that follow. Accordingly, the rejection appears to be improper for at least this reason.

Furthermore, Dubrul et al. do not appear to disclose each and every element of independent claim 49, as is required to establish a *prima facie* rejection. For example, Dubrul et al. do not appear to disclose “wherein the distal region of the wire includes a distal tip and a region proximate the distal tip having a maximum width perpendicular to the longitudinal axis of the lumen that is greater than the width of the intermediate region of the wire and wherein the distal tip has a width that is less than that of the region proximate the distal tip, wherein the distal region includes a distal taper that is more gradual than a proximal taper”, as required by independent claim 49. Therefore, Dubrul et al. cannot anticipate the claim.

Since claims 50-53, 55-58, and 64-65 depend from claim 49 and add additional elements thereto, Applicants submit that these claims are also not anticipated by Dubrul et al. Withdrawal of the rejection is respectfully requested.

#### ***Conclusion***

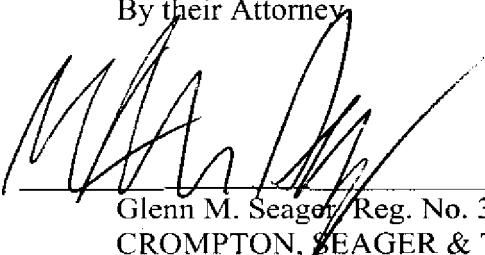
Reexamination and reconsideration are respectfully requested. It is respectfully submitted that the claims are now in condition for allowance, and issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By their Attorney

Date: 28130, 2009

  
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